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**AMENDMENT OFFERED BY MR. MARKEY OF  
MASSACHUSETTS**

**TO THE AMENDMENT IN THE NATURE OF A  
SUBSTITUTE OFFERED BY MR. TAUZIN**

[NET Center; study; doubling of criminal penalties]

(Page & line nos. refer to Committee Print of 9/9/97)

Page 2 of the amendment, strike line 6 and all that follows through page 7, line 6, and insert the following:

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the "Security and Freedom  
3 Through Encryption (SAFE) Act".

4 **SEC. 2. SALE AND USE OF ENCRYPTION.**

5       (a) IN GENERAL.—Part I of title 18, United States  
6 Code, is amended by inserting after chapter 123 the fol-  
7 lowing new chapter:

8 **"CHAPTER 125—ENCRYPTED WIRE AND**  
9 **ELECTRONIC INFORMATION**

"2801. Definitions.

"2802. Freedom to use encryption.

"2803. Freedom to sell encryption.

"2804. Prohibition on mandatory key escrow.

"2805. Unlawful use of encryption in furtherance of a criminal act.

10 **"§ 2801. Definitions**

11       "As used in this chapter—

12               "(1) the terms 'person', 'State', 'wire commu-  
13 nication', 'electronic communication', 'investigative  
14 or law enforcement officer', and 'judge of competent

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I.L.C.

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1 jurisdiction' have the meanings given those terms in  
2 section 2510 of this title;

3 "(2) the terms 'encrypt' and 'encryption' refer  
4 to the scrambling of wire communications, electronic  
5 communications, or electronically stored information,  
6 using mathematical formulas or algorithms in order  
7 to preserve the confidentiality, integrity, or authen-  
8 ticity of, and prevent unauthorized recipients from  
9 accessing or altering, such communications or infor-  
10 mation;

11 "(3) the term 'key' means the variable informa-  
12 tion used in a mathematical formula, code, or algo-  
13 rithm, or any component thereof, used to decrypt  
14 wire communications, electronic communications, or  
15 electronically stored information, that has been  
16 encrypted; and

17 "(4) the term 'United States person' means—

18 "(A) any United States citizen;

19 "(B) any other person organized under the  
20 laws of any State, the District of Columbia, or  
21 any commonwealth, territory, or possession of  
22 the United States; and

23 "(C) any person organized under the laws  
24 of any foreign country who is owned or con-

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H.L.C.

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1           trolled by individuals or persons described in  
2           subparagraphs (A) and (B).

3   **"§ 2802. Assistance for law enforcement**

4       "(a) NATIONAL ELECTRONIC TECHNOLOGIES CEN-  
5   TER.—

6           "(1) ESTABLISHMENT.—There is established in  
7       the Department of Justice a National Electronic  
8       Technologies Center (in this subsection referred to  
9       as the 'NET Center').

10          "(2) DIRECTOR.—The NET Center shall have a  
11       Director, who shall be appointed by the Attorney  
12       General.

13          "(3) DUTIES.—The duties of the NET Center  
14       shall be—

15                "(A) to serve as a center for Federal,  
16       State, and local law enforcement authorities for  
17       information and assistance regarding decryption  
18       and other access requirements;

19                "(B) to serve as a center for industry and  
20       government entities to exchange information  
21       and methodology regarding information security  
22       techniques and technologies;

23                "(C) to examine encryption techniques and  
24       methods to facilitate the ability of law enforce-

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1           ment to gain efficient access to plaintext of  
2           communications and electronic information;

3           “(D) to conduct research to develop effi-  
4           cient methods, and improve the efficiency of ex-  
5           isting methods, of accessing plaintext of com-  
6           munications and electronic information;

7           “(E) to investigate and research new and  
8           emerging techniques and technologies to facili-  
9           tate access to communications and electronic in-  
10          formation, including —

11               “(i) reverse-steganography;

12               “(ii) decompression of information  
13               that previously has been compressed for  
14               transmission; and

15               “(iii) de-multiplexing; and

16           “(F) to obtain information regarding the  
17           most current hardware, software, telecommuni-  
18           cations, and other capabilities to understand  
19           how to access information transmitted across  
20           networks.

21           “(4) EQUAL ACCESS.—State and local law en-  
22           forcement agencies and authorities shall have access  
23           to information, services, resources, and assistance  
24           provided by the NET Center to the same extent that

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H.L.C.

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1 Federal law enforcement agencies and authorities  
2 have such access.

3 “(5) PERSONNEL.—The Director may appoint  
4 such personnel as the Director considers appropriate  
5 to carry out the duties of the NET Center.

6 “(6) ASSISTANCE OF OTHER FEDERAL AGEN-  
7 CIES.—Upon the request of the Director of the NET  
8 Center, the head of any department or agency of the  
9 Federal Government may, to assist the NET Center  
10 in carrying out its duties under this subsection—

11 “(A) detail, on a reimbursable basis, any of  
12 the personnel of such department or agency to  
13 the NET Center; and

14 “(B) provide to the NET Center such fa-  
15 cilities, information, and other non-personnel  
16 resources.

17 “(7) PRIVATE INDUSTRY ASSISTANCE.—The  
18 NET Center may accept, use, and dispose of gifts,  
19 bequests, or devises of money, services, or property,  
20 both real and personal, for the purpose of aiding or  
21 facilitating the work of the Center. Gifts, bequests,  
22 or devises of money and proceeds from sales of other  
23 property received as gifts, bequests, or devises shall  
24 be deposited in the Treasury and shall be available

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H.L.C.

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1 for disbursement upon order of the Director of the  
2 NET Center.

3 “(8) ADVISORY BOARD.—

4 “(A) ESTABLISHMENT.—There is estab-  
5 lished the Advisory Board of the Strategic NET  
6 Center for Excellence in Information Security  
7 (in this paragraph referred to as the ‘Advisory  
8 Board’), which shall be comprised of members  
9 who have the qualifications described in sub-  
10 paragraph (B) and who are appointed by the  
11 Attorney General. The Attorney General shall  
12 appoint a chairman of the Advisory Board.

13 “(B) QUALIFICATIONS.—Each member of  
14 the Advisory Board shall have experience or ex-  
15 pertise in the field of encryption, decryption,  
16 electronic communication, information security,  
17 or electronic commerce, or in the field of law  
18 enforcement.

19 “(C) DUTIES.—The duty of the Advisory  
20 Board shall be to advise the NET Center and  
21 the Federal Government regarding new and  
22 emerging technologies relating to encryption  
23 and decryption of communications and elec-  
24 tronic information.

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H.L.C.

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1           “(9) IMPLEMENTATION PLAN.—Within 2  
2 months after the date of the enactment of the Secu-  
3 rity and Freedom Through Encryption (SAFE) Act,  
4 the Attorney General shall, in consultation and co-  
5 operation with other appropriate Federal agencies  
6 and appropriate industry participants, develop and  
7 cause to be published in the Federal Register a plan  
8 for establishing the NET Center. The plan shall—

9           “(A) specify the physical location of the  
10 NET Center and the equipment, software, and  
11 personnel resources necessary to carry out the  
12 duties of the NET Center under this sub-  
13 section;

14           “(B) assess the amount of funding nec-  
15 essary to establish and operate the NET Cen-  
16 ter; and

17           “(C) identify sources of probable funding  
18 for the NET Center, including any sources of  
19 in-kind contributions from private industry.

20           “(b) FREEDOM OF USE.—Subject to section 2805, it  
21 shall be lawful for any person within any State, and for  
22 any United States person in a foreign country, to use any  
23 encryption, regardless of the encryption algorithm se-  
24 lected, encryption key length chosen, or implementation  
25 technique or medium used. No Federal or State law or

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1 regulation may condition the issuance of certificates of au-  
2 thentication or certificates of authority for any encryption  
3 product upon any escrowing or other sharing of private  
4 encryption keys, whether with private agents or govern-  
5 ment entities, or establish a licensing, labeling, or other  
6 regulatory scheme for any encryption product that re-  
7 quires key escrow as a condition of licensing or regulatory  
8 approval.

9       “(c) STUDY.—Within 6 months after the date of the  
10 enactment of the Security and Freedom Through  
11 Encryption (SAFE) Act, the National Telecommuni-  
12 cations and Information Administration shall conduct a  
13 study, and prepare and submit to the Congress and the  
14 President a report regarding such study, that—

15               “(1) assesses the effect that establishment of a  
16 mandatory system for recovery of encryption keys  
17 for encrypted communications and information  
18 would have on—

19                       “(A) electronic commerce;

20                       “(B) data security;

21                       “(C) privacy in interstate commerce; and

22                       “(D) law enforcement authorities and ac-  
23 tivities; and



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1           “(2) assesses other possible methods for provid-  
2           ing access to encrypted communications and infor-  
3           mation to further law enforcement activities.

4   **“§ 2803. Freedom to sell encryption**

5           “Subject to section 2805, it shall be lawful for any  
6   person within any State to sell in interstate commerce any  
7   encryption, regardless of the encryption algorithm se-  
8   lected, encryption key length chosen, or implementation  
9   technique or medium used.

10   **“§ 2804. Prohibition on mandatory key escrow**

11           “(a) PROHIBITION.—No person in lawful possession  
12   of a key to encrypted communications or information may  
13   be required by Federal or State law to relinquish to an-  
14   other person control of that key.

15           “(b) EXCEPTION FOR ACCESS FOR LAW ENFORCE-  
16   MENT PURPOSES.—Subsection (a) shall not affect the au-  
17   thority of any investigative or law enforcement officer, or  
18   any member of the intelligence community as defined in  
19   section 3 of the National Security Act of 1947 (50 U.S.C.  
20   401a), acting under any law in effect on the effective date  
21   of this chapter, to gain access to encrypted communica-  
22   tions or information.

Page 7 of the amendment, line 17, strike “5 years”  
and insert “10 years”.

F:\PCC\105TEL\ENCRYP\MARKEY.011

H.L.C.

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Page 7 of the amendment, line 22, strike "10 years"  
and insert "20 years".

Page 7 of the amendment, after line 23, insert the  
following:

**1    "§ 2805. Liability limitations**

2        "No person shall be subject to civil or criminal liabil-  
3   ity for providing access to the plaintext of encrypted com-  
4   munications or electronic information to any law enforce-  
5   ment official or authorized government entity, pursuant  
6   to judicial process."

Page 8 of the amendment,  
after line 2 insert:

7 **SEC. 3. EXPORTS OF ENCRYPTION.**

8 (a) *AMENDMENT TO EXPORT ADMINISTRATION ACT OF*  
9 *1979.—Section 17 of the Export Administration Act of*  
10 *1979 (50 U.S.C. App. 2416) is amended by adding at the*  
11 *end thereof the following new subsection:*

12 “(g) *COMPUTERS AND RELATED EQUIPMENT.—*

13 “(1) *GENERAL RULE.—Subject to paragraphs*  
14 *(2), (3), and (4), the Secretary shall have exclusive*  
15 *authority to control exports of all computer hardware,*  
16 *software, and technology for information security (in-*  
17 *cluding encryption), except that which is specifically*  
18 *designed or modified for military use, including com-*  
19 *mand, control, and intelligence applications.*

20 “(2) *ITEMS NOT REQUIRING LICENSES.—No vali-*  
21 *dated license may be required, except pursuant to the*  
22 *Trading With The Enemy Act or the International*  
23 *Emergency Economic Powers Act (but only to the ex-*  
24 *tent that the authority of such Act is not exercised to*

1       *extend controls imposed under this Act), for the export*  
2       *or reexport of—*

3               “(A) *any software, including software with*  
4       *encryption capabilities—*

5               “(i) *that is generally available, as is,*  
6       *and is designed for installation by the pur-*  
7       *chaser; or*

8               “(ii) *that is in the public domain for*  
9       *which copyright or other protection is not*  
10       *available under title 17, United States*  
11       *Code, or that is available to the public be-*  
12       *cause it is generally accessible to the inter-*  
13       *ested public in any form; or*

14               “(B) *any computing device solely because it*  
15       *incorporates or employs in any form software*  
16       *(including software with encryption capabilities)*  
17       *exempted from any requirement for a validated*  
18       *license under subparagraph (A).*

19               “(3) *SOFTWARE WITH ENCRYPTION CAPABILI-*  
20       *TIES.—The Secretary shall authorize the export or re-*  
21       *export of software with encryption capabilities for*  
22       *nonmilitary end uses in any country to which exports*  
23       *of software of similar capability are permitted for use*  
24       *by financial institutions not controlled in fact by*

1        *United States persons, unless there is substantial evi-*  
2        *dence that such software will be—*

3                *“(A) diverted to a military end use or an*  
4                *end use supporting international terrorism;*

5                *“(B) modified for military or terrorist end*  
6                *use; or*

7                *“(C) reexported without any authorization*  
8                *by the United States that may be required under*  
9                *this Act.*

10               *“(4) HARDWARE WITH ENCRYPTION CAPABILI-*  
11               *TIES.—The Secretary shall authorize the export or re-*  
12               *export of computer hardware with encryption capa-*  
13               *bilities if the Secretary determines that a product of-*  
14               *fering comparable security is commercially available*  
15               *outside the United States from a foreign supplier,*  
16               *without effective restrictions.*

17               *“(5) DEFINITIONS.—As used in this subsection—*

18               *“(A) the term ‘encryption’ means the scram-*  
19               *bling of wire or electronic information using*  
20               *mathematical formulas or algorithms in order to*  
21               *preserve the confidentiality, integrity, or authen-*  
22               *ticity of, and prevent unauthorized recipients*  
23               *from accessing or altering, such information;*

24               *“(B) the term ‘generally available’ means,*  
25               *in the case of software (including software with*

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1       *encryption capabilities), software that is offered*  
2       *for sale, license, or transfer to any person with-*  
3       *out restriction, whether or not for consideration,*  
4       *including, but not limited to, over-the-counter re-*  
5       *tail sales, mail order transactions, phone order*  
6       *transactions, electronic distribution, or sale on*  
7       *approval;*

8               “(C) the term ‘as is’ means, in the case of  
9       *software (including software with encryption ca-*  
10       *pabilities), a software program that is not de-*  
11       *signed, developed, or tailored by the software*  
12       *publisher for specific purchasers, except that such*  
13       *purchasers may supply certain installation pa-*  
14       *rameters needed by the software program to*  
15       *function properly with the purchaser’s system*  
16       *and may customize the software program by*  
17       *choosing among options contained in the soft-*  
18       *ware program;*

19               “(D) the term ‘is designed for installation  
20       *by the purchaser’ means, in the case of software*  
21       *(including software with encryption capabilities)*  
22       *that—*

23               “(i) the software publisher intends for  
24       *the purchaser (including any licensee or*  
25       *transferee), who may not be the actual pro-*

1            *gram user, to install the software program*  
2            *on a computing device and has supplied the*  
3            *necessary instructions to do so, except that*  
4            *the publisher may also provide telephone*  
5            *help line services for software installation,*  
6            *electronic transmission, or basic operations;*  
7            *and*

8            *“(ii) the software program is designed*  
9            *for installation by the purchaser without*  
10           *further substantial support by the supplier;*

11           *“(E) the term ‘computing device’ means a*  
12           *device which incorporates one or more micro-*  
13           *processor-based central processing units that can*  
14           *accept, store, process, or provide output of data;*  
15           *and*

16           *“(F) the term ‘computer hardware’, when*  
17           *used in conjunction with information security,*  
18           *includes, but is not limited to, computer systems,*  
19           *equipment, application-specific assemblies, mod-*  
20           *ules, and integrated circuits.”.*

21           *(b) CONTINUATION OF EXPORT ADMINISTRATION*  
22           *ACT.—For purposes of carrying out the amendment made*  
23           *by subsection (a), the Export Administration Act of 1979*  
24           *shall be deemed to be in effect.*

insert  
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